

NOS. 01-20-00477-CR, 01-20-00478-CR, 01-20-00479-CR

IN THE COURT OF APPEALS
FOR THE FIRST JUDICIAL DISTRICT
AT HOUSTON, TEXAS

FILED IN
1st COURT OF APPEALS
HOUSTON, TEXAS
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CHRISTOPHER A. PRINE
Clerk

IN RE THE STATE OF TEXAS Ex REL. BRIAN W. WICE, RELATOR,

RELATOR'S OPPOSED MOTION FOR ORAL ARGUMENT

ANCILLARY TO
STATE OF TEXAS V. WARREN KENNETH PAXTON, JR.
CAUSE NOS. 1555100, 1555101, 1555102
185TH CRIMINAL DISTRICT COURT OF HARRIS COUNTY, TEXAS
TO THE HONORABLE JUSTICES OF THE COURT OF APPEALS:

BRIAN W. WICE, on behalf of the State of Texas ["Relator"¹], and
pursuant to Tex. R. App. P. 39.1, files this Opposed Motion for Oral
Argument in the above-styled and numbered original proceeding.

PROCEDURAL HISTORY

Pending before this Court is Relator's Petition for Mandamus filed
on June 30, 2020. It seeks to set aside an order initially entered on June
25, 2020 by Judge Robert Johnson² of the 177th District Court of Harris

¹ Relator and Co-Relator Kent A. Schaffer were appointed to serve as Collin County Criminal District Attorneys Pro Tem in the three criminal felony prosecutions now pending against the Real Party in Interest, Texas Attorney General Ken Paxton ["Paxton"].

² After Judge Johnson voluntarily recused himself on July 6, 2020, the Court abated this matter on July 28, 2020 to afford Respondent the opportunity to revisit Judge Johnson's ruling.

County, Texas, returning venue to Collin County in the underlying felony prosecutions against Paxton. On October 23, 2020, Judge Jason Luong of the 185th District Court of Harris County [“Respondent”], entered an order that: (1) he lacked jurisdiction to reconsider Judge Johnson’s initial order; and (2) assuming Respondent had jurisdiction, Judge Johnson correctly ruled that Judge George Gallagher’s order of appointment had expired prior to his entry of an order transferring venue to Harris County.

On October 29, 2020, Justice Goodman issued an order staying enforcement of Respondent’s order returning venue to Collin County in this matter until the Court³ finally decided Relator’s mandamus petition or otherwise ordered the stay lifted.

REASONS WHY THIS PROCEEDING IS WORTHY OF ORAL ARGUMENT

Rule 39.1 provides that a party who has filed a brief and has timely requested oral argument⁴ is entitled to present oral argument unless the court, after examining the briefs, decides that argument is unnecessary because:

³ The other members of the panel are Justice Countiss and Justice Hightower.

⁴ Relator timely requested oral argument in his petition. PET. 2. *See also* Tex. R. App. P. 52.8(b)(4)(appellate court may set original proceeding for oral argument).

- the appeal is frivolous;
- the dispositive issue or issues have been authoritatively decided;
- the facts and legal arguments are adequately presented in the briefs and record; or
- the decisional process would not be significantly aided by oral argument.

Viewed against this backdrop, this original proceeding is deserving of oral argument. First, this matter is the antithesis of frivolous. Second, the issues presented in this original proceeding are not only novel, their importance to the parties and to the jurisprudence of Texas cannot be overstated. For this reason alone, both sides should have their proverbial day in court. Third, while this matter is well briefed, this fact does not, indeed, should not, make this original proceeding any less worthy of oral argument. Fourth, oral argument will provide the optimum opportunity for counsel to address any questions the Court may have that may not be fully addressed in the briefing, a compelling reason why oral argument will significantly aid the Court in the decisional process.

PRAYER FOR RELIEF

For these reasons, Relator prays that this Court grant this motion and set this original proceeding for oral argument.

RESPECTFULLY SUBMITTED,

/s/ BRIAN W. WICE

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CERTIFICATE OF SERVICE AND CONFERENCE

Pursuant to Tex. R. App. P. 9.5(d), this motion was today served by e-filing on opposing counsel, Michael Mowla, who informed me on March 1, 2020 via e-mail that he is opposed to this motion

/s/ BRIAN W. WICE

BRIAN W. WICE